

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:
	:
vs.	: NO. 91-10, 935
	:
JERARD BRADLEY,	: CRIMINAL DIVISION
	:
Defendant	: 1925(a) Opinion

MEMORANDUM IN SUPPORT OF THE ORDER OF FEBRUARY 18, 2009 IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

AND NOW, this 2nd day of April, 2009, this order is entered in reference to Defendant Jerard Bradley's appeal of this Court's order of February 18, 2009 which dismissed the Defendant's petition under the Post Conviction Relief Act (hereinafter "PCRA"). The Defendant's appeal should be denied and this Court's order of February 18, 2009 affirmed.

By way of background, Defendant plead guilty in this matter on May 18, 1992 and was sentenced on April 17, 1996; he did not file a direct appeal of that sentence. Defendant filed his most recent petition under the PCRA on October 11, 2008. This Court entered an order on January 9, 2009 proposing to dismiss the PCRA petition without a hearing in accordance with Pennsylvania Rule of Criminal Procedure 907, Disposition Without a Hearing, as we deemed the petition untimely filed. Defendant appealed that order, but later withdrew his appeal by filing a Praecipe to Discontinue and End in the Superior Court, dated February 25, 2009, explaining that, inadvertently, he had prematurely filed that appeal. On February 18, 2009, not having received a response, this Court dismissed Defendant's PCRA petition. On March 2, 2009, the Defendant appealed that dismissal.

With his appeal, Defendant filed a concise statement of the errors complained of on the appeal (hereinafter "Statement"), satisfying Rule 1925(b) of the Pennsylvania Rules of Appellate

Procedure.¹ Thus, we write this 1925(a) Memorandum. Defendant's Statement alleged that his PCRA petition warranted a hearing and that this Court was in error in finding that the petition did not set forth any grounds that warranted delaying disposal of the matter. Specifically, Defendant complained that the claims he raised in his recent PCRA petition were not analogous to those raised in his past Motion to Appeal *Nunc Pro Tunc* or auxiliary PCRA Petition, both of which were denied by the Superior Court with that court's reasoning set forth in an October 17, 2002 Memorandum. Defendant's Statement asserted that the issues he raises in this recent PCRA petition are not analogous to issues already raised and decided in the past, because he has since been sent a letter from Marc Lovecchio, Esquire, his sentencing attorney.

Although the Defendant has not supplied this Court with a copy of said letter, the Defendant alleged in his Statement that the letter "stated that Mr. Bradley's plea agreement made before the Honorable Judge Raup in 1991/1992 was for a total of five (5) years; two (2) consecutive, and three (3) concurrent. Not the ten (10) years that he was sentenced to by Judge Smith. And at the time of the sentencing in 1996 he was not aware of the plea agreement or the error."

In addition, Defendant also claimed that his recent PCRA petition is not analogous to those he filed in the past because, with this letter, Mr. Lovecchio also sent the Defendant his sentencing order, guilty plea colloquy, and guilty plea order, which, allegedly, not only had he never received prior to Mr. Lovecchio sending copies of the documents recently, but that Mr. Lovecchio also had never had these documents, or copies thereof, in his possession himself until September of 2009.

¹ The Defendant filed the very same Statement in this court's Prothonotary's Office on February 17, 2009. As it was titled Statement of Errors Complained of on Appeal and the Defendant had not yet withdrawn that appeal, this Court interpreted the document just as one in compliance with Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure and not as a response to our proposed dismissal of his PCRA petition.

The letter that the Defendant received from his sentencing attorney does not constitute a newly discovered fact that would fall within the after-discovered facts exception, nor do the copies of the file documents enclosed therewith. The information contained in the letter, as depicted by the Defendant in his Statement, was written based on documents contained in the Defendant's file, of which the Defendant now had copies.

Furthermore, whether a sentence is outside the bounds of a plea agreement does not necessarily imply ineffective assistance of counsel. In Pennsylvania law, it is well established that the sentencing alternatives available to a court at the time of initial sentencing are all of the alternatives statutorily available under the Sentencing Code. Pa. R. Crim. P. 591(A). Certainly, this Court had reference to the defendant's guilty plea colloquy; it was specially made of record by being attached to the May 18, 1992 guilty plea order. Although the prosecutor may make promises to the defendant and the prosecutor is bound to act in accordance with those promises, this in no way binds the presiding judge to the terms of the agreement provided that the defendant has the chance to withdraw his guilty plea if the judge's sentence is not in accordance with his negotiated agreement. Because this Court was aware of the Defendant's plea colloquy, but could still sentence the defendant to any term allowed under the Sentencing Code, the Defendant cannot rely on his counsel's supposed ineffectiveness to grant him a remand when he waited years to discover what was always present in his file.

Although the Defendant's trial attorney died prior to sentencing, his sentencing attorney did not have his file in this case in his physical possession at the time of sentencing, almost four years had past between Defendant's plea and when he was sentenced (deferred until after Defendant's pending murder charge in another case was resolved), and, as he asserted, the Defendant's plea agreement does not comport with the sentence he received in this case, all that the Defendant needed to present the same claim he makes in his most recent PCRA petition was

in his file. Receipt of a letter depicting facts and issues always contained in Defendant's file does not take the Defendant's issues outside the realm of that which was already argued in his Motion to Appeal *Nunc Pro Tunc* and auxiliary PCRA petition, which were ruled on both by this Court and the Superior Court years ago. In response to those past motions, the Superior Court explained, as did this Court, that Defendant waited too long to assert that due-diligence would not have discovered the counsel's ineffectiveness. Memorandum, PA Superior Court, October 17, 2002, p. 3-4; citing *Commonwealth v. Carr*, 786 A.2d 1164 (Pa. Super. 2001); *Commonwealth v. Hall*, 771 A.2d 1232 (2001).

We take the same position with regard to the Defendant's recent PCRA petition and current appeal as we did to his past motions, that they were not timely filed and he failed to establish an exception to the one-year time limit. Thus, we reiterate the conclusion of our order of February 18, 2009 and rely on the reasoning set forth in this Court's opinion and order of January 9, 2009 intending to dismiss Defendant's PCRA. For ease of reference, our January 9, 2009 order is attached hereto. Defendant's appeal of this court's order of February 18, 2009 should be denied.

BY THE COURT,

Clinton W. Smith, Senior Judge

cc: Jerard Bradley

SCI-Somerset, 1600 Walters Mill Road, Somerset, PA 15510

Senior Judge Clinton W. Smith

DA

Judges

Gary L. Weber, Esquire (Lycoming Reporter)